IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

FRIDAY, THE 14TH SEPTEMBER 2007 / 23RD BHADRA 1929

CRL.A.No. 517 of 1999()

CC.23/1997 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II, KANNUR

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APPELLANT:

ARIYERI BALAN, S/O.KELAN, AGED 61 YEARS,
RESIDING AT ARIYERI HOUSE, MULLAKOD KAYARALAM,
KANNUR.

BY ADV. SRI.M.P.VIJAYAN

RESPONDENTS:

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1. C.P. SURENDRAN, S/O. GOPALAN,
CHELANGADAN PUTHIYAPURAYIL,
KELATHURUTHI, PARASSINIKKADAVU,
KANNUR DISTRICT.

2. STATE OF KERALA REP. BY ITS
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

R1-BY ADV. SRI.M.RAMESH CHANDER
R2- BY P.P.SRI. PUZHAKKARA MOHAMMED

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 14.09.2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. THANKAPPAN, J.

CRL.A.NO.517 OF 1999-C

Dated this the 14th day of September, 2007.

JUDGMENT

The complainant in C.C.No.23/1997 on the file of the Judicial Magistrate of First Class-II, Kannur, is the appellant. He challenges the judgment of the trial court in the above case by which the respondent/1st accused was acquitted by the court below of the charge of an offence punishable under Section 138 of the N.I.Act, 1881. The allegation in the complaint filed against the 1st respondent/accused was that he had borrowed an amount of Rs.2,50,000/= from the appellant/complainant on 14.4.1996 and for the discharge of the said amount, a cheque was issued and when the cheque was presented for encashment, the same was dishonoured on the ground of insufficiency of fund with the account of the 1st respondent/accused. On complying the provisions regarding notice and on seeing that the amount has not been repaid, the complaint has been filed before the court. Before the trial court, the appellant/complainant himself was examined as PW1 and produced Exts.P1 to P6. The 1st respondent/accused was questioned on closing the evidence adduced on behalf of the appellant under Section

313 of the Code. The 1st respondent denied the allegations in the complaint. He had stated further that he had only borrowed the amount of Rs.25,000/= from the appellant and at the time of receiving that amount, he had given a blank cheque as security for the said amount. According to the 1st respondent/accused, the said amount was also repaid but the cheque was not returned and by misusing that cheque, the complaint has been filed. To prove the case of the 1st respondent, he himself was examined as DW1 and another witness – DW2 was also examined. Ext.D1 receipt for an amount of Rs.35,000/= was also produced. Hence, the trial court found that the appellant had not proved that the cheque in question was issued for the discharge of the alleged amount of Rs.2,50,000/= and hence, the appeal was filed before this Court

2. After hearing the learned counsel on either side and on perusing the records made available to this Court, I am of the view that the trial court had considered the entire evidence adduced before the court and came to the conclusion that the appellant could not prove the case against the 1st respondent and hence the acquittal has been ordered. The trail court found that the appellant had never in his possession Rs.2,50,000/= or above and he was not

in a position to give such a huge amount as loan to the 1st respondent. Further the trial court found that the case set up by the appellant that he had borrowed an amount of Rs. Four Lakhs and Odd from a Co-operative Bank was also not established by any documentary evidence or any other evidence. Further the trial court found that the case set up by the 1st respondent was correct and more probable and the trial court found as per Ext.D1 an amount of Rs.35,000/= has been also paid to the appellant and this fact has been admitted by the appellant when he was cross examined. In the above circumstances, the acquittal is on evidence and there is no reason to interfere with the judgment of the trial court. Accordingly, the appeal is dismissed confirming the judgment of the trial court.

K. THANKAPPAN, JUDGE.

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K. THANKAPPAN,

CRL.A.NO.517 OF 1999-C

JUDGMENT

14th September, 2007.